

laws of the state of Maryland. T. at 1764. David, Robert, Frederick, and Duncan Smith each own 25% of Sinclair's stock and serve on Sinclair's board of directors. FJ26 at ¶ 1, FJ27 at ¶ 1; FJ28 at ¶ 1.

88. Sinclair's business is the management of its wholly-owned subsidiary television stations. T. at 1778-79. Sinclair has no business other than the management of its stations, planning its own expansion, and programming other stations in Sinclair markets. T. at 1779; SH40, Tab 14 at 44 (setting forth Sinclair's operating strategy), Tab 14 at 16-17 (referring to programming services agreement relating to WNUV and WVTM).

89. David Smith is President, Chairman, Chief Executive Officer and a Director of Sinclair; Robert Smith is Vice President, Treasurer, and a Director; Frederick Smith is Vice President, Assistant Treasurer, and a Director; and Duncan Smith is Vice President, Secretary, and a Director. FJ1 at 2-5; T. at 1073-74; T. at 1296.

90. Sinclair wholly owns WPGH, Inc.; WTTE, Channel 28, Inc.; Chesapeake Television, Inc.; WTTT, Inc.; and WCGV, Inc. David Smith is President and a Director of each of these companies; Robert Smith is Vice President, Treasurer, and a Director; Frederick Smith is Vice President, Assistant Treasurer, and a Director; and Duncan Smith is Vice President, Secretary, and a Director. FJ1 at 2-4; FJ26 at ¶ 1; T. at 1098, 1793-94.

91. WPGH, Inc. wholly owns WPGH Licensee, Inc., the licensee of WPGH-TV, Pittsburgh, Pennsylvania. WPGH is the Fox

affiliate in Pittsburgh, which is the 17th largest media market in the United States. SH40, Tab 14 at 18. It is the leading revenue producing independent station in the Pittsburgh market. Id.

92. WTTE, Channel 28, Inc. wholly owns WTTE, Channel 28 Licensee, Inc., the licensee of WTTE(TV), Columbus, Ohio. WTTE is the Fox affiliate in Columbus, which is the 34th largest media market in the country. SH40, Tab 14 at 18. It is the only independent station in the Columbus market. Id.

93. Chesapeake Television, Inc. wholly owns Chesapeake Television Licensee, Inc., the licensee of WBFF(TV), Baltimore, Maryland. WBFF is the Fox affiliate in Baltimore, which is the 22nd largest media market in the country. SH40, Tab 14 at 18. It is the largest revenue producing independent station in the Baltimore market. Id.

94. WTOO, Inc. wholly owns WTOO Licensee, Inc., which is the licensee for television station WTOO(TV), Birmingham, Alabama. FJ1 at 5-6; T. at 1098, 1793-94. WTOO is the leading revenue producing independent in the Birmingham market, which is the 49th largest media market in the country. FH40, Tab 14 at 19.

95. WCGV Inc. wholly owns WCGV Licensee, Inc., which is the licensee for television station WCGV-TV, Milwaukee, Wisconsin. FJ1 at 5-6; T. at 1098, 1793-94. WCGV is one of two independents in the Milwaukee market, which is the 28th largest media market in the country. SH40, Tab 14 at 19.

96. David Smith is President and a Director of each of the five licensee stations listed above; Robert Smith is Vice President, Treasurer, and a Director; Frederick Smith is Vice President, Assistant Treasurer, and a Director; and Duncan Smith is Vice President, Secretary, and a Director. FJ1 at 2-6.

97. Sinclair owned three stations at the time it filed its Application for Channel 2: WPGH; WTTE; and WBFF; it acquired two stations subsequent to filing its Application: WTTD and WCGV. T. at 1793-94.

98. There has been an application filed to assign station WLFL in Raleigh, North Carolina to a subsidiary of Sinclair. T. at 1796.

99. Each of the three Smiths have pledged to work full time in managerial positions at Channel 2 in the event that Four Jacks' Application should be granted.

2. Four Jacks' Three Integrated Principals Promise to Resign from Their Then-Current Employment

a. Four Jacks' Application Represents That the Three Smiths Will Resign Their Then-Current Employment

100. Four Jacks filed its Form 301 Application for Channel 2 on September 3, 1991 (the "Application"). SH46. As part of the Integration Statement contained in the Application, David, Robert and Frederick Smith pledged that they "will resign from their then-current employment" SH46 (Exh. 6 at 4-5).

101. In its Application, Four Jacks also represented that the three Smiths "will limit or terminate any other activities

that might interfere with their integration commitment." SH46 (Exh. 6 at 5); T. at 1984.

102. Four Jacks' Application also states that

[s]hould this Application be granted, the principals of Four Jacks Broadcasting, Inc. will divest in a manner which will be in compliance with Section 73.3555 of the Rules and Regulations, all of their interests in and sever all connection with WBFF(TV) Channel 45, Baltimore, Maryland.

SH46 (Exh. 4); T. at 1893-94, 2085.

b. The Three Smiths' Promise to Resign Their Then-Current Employment Is Confirmed in Four Jacks' Integration and Diversification Statement

103. By Prehearing Conference Order, FCC 93M-146 (released April 6, 1993), the Presiding Judge ordered each party in this proceeding to file "a full, complete and definitive statement of their respective integration proposals." Id. at 2. The Presiding Judge expressly required that "the parties must state specifically their hourly integration commitments and their definitive intentions to leave their current employment and other business positions and ventures (service on board of directors, ownership of businesses)." Id. at 1 n.1 (emphasis added).

104. In response to the Presiding Judge's April 6, 1993 Order, Four Jacks filed its Integration and Diversification Statement, dated May 7, 1993. SH47. In its Integration and Diversification Statement, the Four Jacks principals confirmed that if their Application for Channel 2 is successful: 1) the three Smiths will resign from their then-current employment; 2) the three Smiths will limit or terminate any commitment that might interfere with their integration pledge; and 3) the four

Smiths will divest their ownership interests and all connections with WBFF. Id. at 2-3.

c. The Pledge to Resign Is Also Confirmed in the Direct Case Testimony of the Three Smiths

105. In direct case statements, filed September 10, 1993, the three Smiths again confirmed their three pledges in connection with their Application for Channel 2. FJ2 at 1; FJ3 at 1; FJ4 at 1.

3. Prior to the Addition of the Misrepresentation Issue, Four Jacks Repeatedly and Consistently Represented That the Three Smiths Are Employees of Sinclair

a. Four Jacks' Application Represents That Robert and Frederick Smith Are Employees of Sinclair

106. Four Jacks' Application represents that "in mid-1988, [Robert Smith] became a full-time employee of Channel 45's parent, Sinclair Broadcast Group, Inc." SH46 (Exh. 6 at 2-3); T. at 2011. Similarly, the Application represents that Frederick Smith "became a full-time employee of Sinclair Broadcast Group, Inc. on July 1, 1991." SH46 (Exh. 6 at 3).⁷

b. Each of the Three Smiths Testified That They Are Employees of Sinclair

107. At the 1993 hearing, each of the three Smiths testified that he is an employee of Sinclair. For example, David Smith volunteered in his testimony that he works at the offices of 2000

⁷ Four Jacks has not amended the Integration Statement contained in its Application, which includes the three Smiths' pledge to resign their then-current employment and representations that Robert and Frederick Smith became employees of Sinclair in 1988 and 1991, respectively. T. at 2231-32.

West 41st Street in Baltimore "as an employee of Sinclair." T. at 1134. Similarly, Robert Smith testified that his present employment is as Vice President and Treasurer of Sinclair. T. at 1239; 2013. Finally, Frederick Smith stated that he is an employee of Sinclair:

Q. And you are, as you've told us, employed by Sinclair Broadcast Group, Inc.

A. Correct.

Q. That's your employment?

A. Correct.

Q. Okay, and you're employed there as are your brothers David, Robert -- and Robert, is that correct? Robert and Fred.

A. Correct.

T. at 1371.

c. David Smith Testified That Sinclair's September 28, 1993 SEC Filing Warned the Public That He Will Resign From Sinclair

108. Sinclair filed a Form S-1 Registration Statement with the Securities and Exchange Commission ("SEC") on September 28, 1993, originally for the purpose of raising approximately \$100,000,000 to refinance an existing bank debt. T. at 1075-76; see SH40, Tab 14. As part of this offering, a prospectus was prepared to go out to the public to raise the money. T. at 1076. David Smith played a part in the preparation or gathering of materials for the September 28, 1993, SEC Registration Statement and Sinclair's subsequent SEC filings as well, up until the final

offering. T. at 1076, 1895; SH40, Tabs 14, 15, 16, 17.⁸ This document was signed by all of the Smith brothers. SH40, Tab 14 at II-14.

109. The September 28, 1993 Registration Statement contains a section entitled "Investment Considerations," which states:

[i]n addition to other information contained in this Prospectus, prospective investors should review carefully the following considerations concerning the Company and the television broadcast industry before purchasing the Notes offered hereby.

T. at 1083; SH40, Tab 14 at 12.⁹

110. One of the items listed under Investment Considerations states that:

Four Jacks Broadcasting, Inc. ("Four Jacks"), a company wholly owned by the Current Stockholders, has filed a competing application with the FCC for the broadcast license of VHF Channel 2 in Baltimore, Maryland. Because of the FCC's multiple ownership rules, the principals of Four Jacks have committed themselves in their application for Channel 2 to divest the interest held by the Company in the broadcast license for WBFF if Channel 2 is awarded to them and before assuming operational control of Channel 2.

T. at 1084; quoting SH40, Tab 14 at 16.

⁸ Sinclair's SEC filings dated September 28, 1993, November 9, 1993, December 2, 1993, and December 6, 1993, have been previously introduced into evidence in this case as SH26, SH31, SH33, and SH34, respectively. For ease of reference, however, all references to these documents in Scripps Howard's Findings shall be to SH40, Tabs 14, 15, 16, and 17.

⁹ Sinclair's September 28, 1993 SEC filing has two sets of numbers at the bottom of each page. Scripps Howard's page references to this document are to the document's internal numbers located at the middle of the bottom of each page, and not the SEC page number located on the bottom right.

111. Under the heading "Control by Stockholders; Dependence Upon Key Personnel," Sinclair's September 28, 1993, Registration Statement also states that:

[t]he Company [Sinclair] believes that its success will continue to be dependent upon its ability to attract and retain skilled managers and other personnel, including its present officers and general managers. The loss of services of any of the present officers, especially its President and Chief Executive Officer, David D. Smith, may have a material adverse effect on the operations of the Company. None of the Company's officers has an employment agreement with the Company. The Company maintains key personnel life insurance of \$5.0 million on the life of David D. Smith, but does not maintain such insurance on any of the other officers.

SH40, Tab 14 at 17.

112. When David Smith was asked whether the September 28, 1993, Registration Statement contained "any reference or hint even that [he] might resign, terminate, or otherwise limit [his] then current employment or other activities if [Four Jacks] is successful in [its] challenge for Channel Two," T. at 1095, he testified as follows:

A. If there is a reference, I think the reference is as required on Page 17 of the document and it's a reference that you've already referenced which is Control by Stockholders: Dependence Upon Key Personnel. I think the document fairly, clearly says that the company may be dependent. That's why it's disclosed. In the event that I leave the company as a result of being successful with Four Jacks, the public has been advised.

Q. What language do you see that says that the public has been advised that you're going to leave if Four Jacks is successful?

A. I read that document to suggest and make clear to the public that in the event that I am not there as a key personnel or that other people as key personnel

aren't there, they're so advised and the success or failure of the company may or may not happen.

T. at 1096-97.

d. Sinclair's November 9, 1993 SEC Filing Identifies the Three Smiths As "Key Personnel" of Sinclair

113. Sinclair amended its September 28, 1993, Registration Statement on November 9, 1993. In Sinclair's November 9, 1993 Registration Statement, the potential negative effect of the sale of WBFF on Sinclair's revenues is expressly disclosed as a separate "risk factor." The SEC filing further identifies as a "risk factor" that the "loss of services of any of the present officers, especially its President and Chief Executive Officer, David D. Smith, may have a material adverse effect on operations of the company." SH40, Tab 15 at 17.

4. Sinclair's December 1993 SEC Filings State, For the First Time, That the Three Smiths Will Retain Their Positions at Sinclair and Continue to Perform All Their Duties as "Key Personnel" If Four Jacks' Application for Channel 2 Is Granted

114. Sinclair filed further amendments to its September 28, 1993 S-1 Registration Statement with the SEC on December 2, 1993 and December 6, 1993. See SH40, Tabs 16, 17. The December 2, 1993, filing states that:

each of David D. Smith, Robert E. Smith and Frederick G. Smith, executive officers of the Company, has made certain commitments in the application filed with the FCC by Four Jacks, including the commitment to work on a full-time basis (40 hours or more per week) in the operations of Channel 2 in Baltimore in the event that Four Jacks is awarded such channel by the FCC. However, David D. Smith has informed the Company that in neither the application nor the FCC proceeding with respect to Four Jacks has he committed to resign his official positions with, or dispose of his ownership interests in, the Company in the event that Four Jacks

is awarded such channel by the FCC. Moreover, the Company believes that each of David D. Smith, Robert E. Smith and Frederick G. Smith will be able to perform all of his current duties with the Company while fulfilling his commitment to work for Channel 2.

SH40, Tab 16 at 19 (emphasis added).¹⁰

115. The December 6, 1993, filing states that:

In the FCC Application, David D. Smith, Robert E. Smith and Frederick G. Smith further stated that each of them would resign from their then-current employment and limit or terminate any other activities that might interfere with their commitments to Four Jacks Further, the Company has been informed by its FCC regulatory counsel and each of these officers that in neither the Application nor the FCC proceeding with respect to Four Jacks has any of these officers committed to resign his official positions with, or dispose of his ownership interests in, the Company in the event that Four Jacks is awarded such channel by the FCC.

SH40, Tab 17 at 19 (emphasis added).¹¹

116. According to Four Jacks' counsel, amendments to Sinclair's SEC filing of September 28, 1993, were made at the request of the SEC. T. at 1287.

5. Based on Sinclair's December 1993 SEC Filings, the Presiding Judge Concluded That There Is a Material Issue of Fact Regarding the Candor of Four Jacks' Integration Commitment

117. In his order dated February 1, 1994, which added the pending misrepresentation issue against Four Jacks, the Presiding Judge stated:

¹⁰ David Smith testified that Sinclair added the above-referenced language to its December 2, 1993 SEC filing because the SEC wanted "clarification" regarding his intentions and the pledge to the FCC. T. at 1908.

¹¹ David Smith testified that Sinclair added the above referenced language to its December 6, 1993, SEC filing because "there was confusion . . . between what we said to the FCC and the way the SEC may have interpreted that" T. at 1909.

[i]t is noted that the clarifying SEC disclosure of the integration pledge was made at the SEC in two December 1993 filings which were made after the Four Jacks testimony in this proceeding. With the juxtaposition of the consequences of full-time integration set against the assurance to potential Sinclair investors that the Smiths would remain with Sinclair on a full-time basis, even if Four Jacks wins Channel 2, there is a substantial question of credibility raised [regarding the Smiths' integration commitment].

Memorandum Opinion and Order, FCC 94M-51 at 5 n.3 (released Feb. 1, 1994) (emphasis in the original). Accordingly, the Presiding Judge concluded that there was "a substantial question of fact raised about the candor of Four Jacks' integration commitment and the relevant documents, pleadings and testimony in which the integration commitment was made to the Commission." Id.

6. The Three Smiths Have Consistently Held Themselves Out As Employees of Sinclair to Federal and State Government Agencies and to the Public

a. Sinclair's Annual EEO Reports to the FCC List the Three Smiths As Employees

118. Sinclair's 1991 Annual EEO Report, filed with the FCC, is signed by David Smith. SH40, Tab 33; T. at 1885. By signing the Report, David Smith certified that "to the best of my knowledge, information and belief, all statements contained in this report are true and correct." SH40, Tab 33 (Section IV Certification).

119. Section V of the 1991 Annual EEO Report is entitled "EMPLOYEE DATA." SH40, Tab 33. Under the heading "FULL-TIME PAID EMPLOYEE DATA" contained in that section, Sinclair represents that it has five "OFFICERS AND MANAGERS" and a total of 10 employees. SH40, Tab 33; T. at 1885-86. David Smith

testified that the five full time paid officers and managers listed in this Report refer to the four Smith brothers and David Amy, who is Sinclair's Controller. T. at 1889-90.

120. The four Sinclair principals were similarly listed, under the heading "FULL-TIME PAID EMPLOYEE DATA," as full time paid employee officers and managers in Sinclair's 1992, 1993, and 1994 Annual EEO Reports. SH42, 43, 44; T. at 1892-93. In each of these Reports, David Smith certified that the information contained therein was true and accurate. SH42, 43, 44 (Section IV Certification).

b. The Three Smiths Receive W-2 Forms As Employees of Sinclair

121. The three Smiths received W-2 forms from their company, Sinclair, for the years 1991, 1992, and 1993. SH40, Tab 3-5; see, e.g., T. at 1804-05 (David Smith). In each one of these W-2 forms, the applicable Smith is listed as the "employee" while Sinclair is listed as the "employer." See e.g. SH40, Tab 4 at box 19 (listing Robert Smith as employee), box 2 (listing Sinclair as employer). The Smiths' W-2 forms also reveal that federal, state, social security, and medicare taxes were withheld from salary of the three Smiths at Sinclair. SH40, Tab 3-5; T. at 1806.

122. Frederick Smith testified that he never suggested to Sinclair that he did not consider himself an employee and that therefore he should not receive a W-2 form; nor did he ever suggest to his accountant that he was not a Sinclair employee. T. at 2184.

c. Robert and Frederick Smith Executed W-4 Forms As Employees of Sinclair

123. The three Smiths also executed W-4 "Employee's Withholding Allowance Certificate[s]." SH40, Tabs 6, 7, 8. David Smith's W-4 form is dated July 4, 1984; Robert Smith's W-4 form is dated October 16, 1992; and Frederick Smith's W-4 form is dated July 1, 1990. Both Frederick and Robert Smith's W-4 forms were executed during the period of time, according to Four Jacks' Application, after they became employees of Sinclair. Id.; SH46 (Exh. 6 at 2-3).

124. David Smith filled out a W-4 Employee Withholding Allowance Certificate while he was an employee of WPTT in Pittsburgh in 1984. T. at 1807. To his recollection, he has not signed another W-4 form. Id.

d. The Three Smiths Admitted That They Do Not Know Anything About the United States Internal Revenue Code, Despite Their 1994 Direct Case Testimony About Why Sinclair Has W-2 and W-4 Tax Forms for the Three Smiths

125. In their 1994 direct case testimony, each of the three Smiths testified that "Sinclair has W-2 and W-4 tax forms for my brothers and me because the law requires tax withholding for persons receiving money from the company." FJ26-28, ¶ 7.

126. David Smith testified that he does not understand or even read his tax return, despite the fact that he signs these returns under penalty of perjury. T. at 1805-06. At one point, David Smith testified that a W-2 is intended to reflect any money received from the company. T. at 1817-18. Subsequently, in a colloquy with the Presiding Judge, David Smith testified that a

W-2 is used to reflect monies received by employees and that a non-employee, such as an independent contractor, would not receive a W-2. T. at 1823-25.

127. Furthermore, David Smith testified that he is not familiar with what form would be used to reflect a dividend received from the company. T. 1817-18. He also testified that he is not familiar with the Internal Revenue Code, T. at 1820, and he does not know its definitions of wages, employer or employee. T. at 1821.

128. When asked if he had any knowledge of the Internal Revenue Code, Robert Smith testified that he doesn't "even know what that term Revenue Code is. Is it a book somewhere?" T. at 2083. Robert Smith also testified that he does not know how his compensation from Sinclair is reflected on personal tax returns. T. at 2016. He just gives all that "stuff" to his accountants and they do "whatever they have to do...." T. at 2017; see also T. at 2079. He has not ever looked at any of his W-2 forms. T. at 2078. He presumes that a W-2 is a federal government form that breaks down a person's wages. T. at 2079-81. When informed that a W-2 form is provided by a company and not the federal government, Robert Smith responded that he doesn't "know where it came from." T. at 2080. Robert Smith filled out and signed his W-4 form because "[his] tax man told [him] to." T. at 2083.

129. Frederick Smith testified that he had never seen his W-2 forms before his accountant gave them to him. T. at 2179. He also testified that he did not recall seeing his W-4 form

before counsel for Scripps Howard showed it to him. T. at 2179. When asked if he knew anything about the Internal Revenue Code, he responded, "[n]ot really." T. at 2183.

e. In Its Maryland State Unemployment Insurance Filings, Sinclair Has Represented That the Three Smiths Are Sinclair Employees

130. Sinclair has represented to the state of Maryland that the three Smiths are Sinclair employees for purposes of Maryland State Unemployment Insurance. SH40, Tab 2; T. at 1814. David Smith's signature appears on Sinclair's unemployment insurance filings although this may be a stamped signature made by an authorized Sinclair employee. T. at 1811-12.¹²

131. By being listed as employees of Sinclair for unemployment insurance, the three Smiths received the benefit of unemployment insurance. T. at 1815. The number of Sinclair employees covered by Maryland Unemployment Insurance was 10, 11, and 11 for years 1991, 1992, and 1993, respectively. SH40, Tab 2. The three Smiths are listed as covered employees for each of these three years. SH40, Tab 2.¹³

¹² David Smith testified that the employees listed on this form include the "true employees of Sinclair," that he referred to in his direct case testimony of 1994. T. at 1813-14.

¹³ Each of the employees listed on Sinclair's unemployment insurance form was paid a salary by Sinclair, including the three Smiths. T. at 2072.

7. The Three Smiths Participate in Every Employee Benefit Provided by Sinclair

a. The Three Smiths Receive a Set Salary Every Two Weeks With Related Deductions

132. David, Robert and Frederick Smith are paid a set amount every two weeks as salary by Sinclair, just like everyone else at Sinclair. T. at 1798, 2016, 2070-72.¹⁴ The paycheck is automatically deposited into their account, which is a benefit available to all employees of Sinclair. T. at 1798.

133. For his services at Sinclair in 1992 and 1993, David Smith was paid a salary of \$225,813 per year. SH40, Tab 14 at 55-56; Tab 18 at 21. Similarly, for his services to Sinclair in 1992 and 1993, Robert Smith was paid a salary of \$140,954 per year. Id. In 1992 and 1993, Frederick Smith was paid a salary of \$140,954 per year by Sinclair. Id.

134. Sinclair's Payroll Registers state that the three Smiths received earnings from "Regular Hours." SH40, Tab 13; T. at 1801-02. The Payroll Registers confirm that federal, medical, state and city taxes were deducted from the three Smiths' salaries. Id.

b. The Three Smiths Participate in Sinclair's Executive Bonus Plan for Eligible Employees

135. During 1992 and 1993, the three Smiths received bonuses as part of their compensation from Sinclair. SH40, Tab 14 at 55-

¹⁴ By contrast, Robert Smith testified that he gets paid monthly "distributions" from other companies he owns, like Keyser, Keyser Investments and Cunningham Communications. T. at 2019-20.

56; Tab 18 at 21.¹⁵ Sinclair provides bonuses "in accordance with the Executive Bonus Plan." SH40; Tab 14 at 55; Tab 18 at 21. More specifically, "[k]ey management employees are eligible to participate in the Company's Executive Bonus Plan (the 'Bonus Plan')." SH40, Tab 14 at 56 (September 28, 1993 SEC filing); Tab 18 at 22 (March 30, 1994 SEC filing); T. at 1871-72. David Smith testified that the three Smiths were included as key management employees eligible for the Bonus Plan. T. 1872-75.

136. For his services at Sinclair in 1992, David Smith was paid a bonus of \$202,130 under the Executive Bonus Plan. SH40, Tab 14 at 55-56. Similarly, in 1993, he received a bonus of \$2,628,615 from Sinclair, which included bonuses paid in accordance with the Executive Bonus Plan and a share of a \$10 million paid in special bonuses to executive officers. SH40, Tab 14 at 55-56; Tab 18 at 21.

137. In 1992, Robert Smith received a bonus of \$199,350 from Sinclair under the Executive Bonus Plan. SH40, Tab 14 at 55-56. In 1993, Robert Smith was paid a bonus of \$2,509,005, which included bonuses paid in accordance with the Executive Bonus Plan and a share of a \$10 million paid in special bonuses to executive officers. SH40, Tab 18 at 21.

138. In 1992, Frederick Smith was paid bonuses of \$199,350 under Sinclair's Executive Bonus Plan. SH40, Tab 14 at 55-56. In 1993, Frederick Smith was paid a bonus of \$2,500,005, which

¹⁵ Sinclair's September 30, 1994 and March 30, 1994 SEC filing was signed by David Smith, on behalf of the company. T. at 1863-65; SH40, Tab 14 at II-14, Tab 18 at 29.

included bonuses paid in accordance with the Executive Bonus Plan and a share of a \$10 million paid in special bonuses to executive officers. SH40, Tab 18 at 21.

139. The three Smiths' bonuses for 1993 under the Executive Bonus Plan for key management employees are set forth in Sinclair's SEC filing dated March 30, 1994. SH40, Tab 18 at 21-22.

140. The three Smiths participate in their capacity as Sinclair directors in deliberations regarding executive officer compensation. T. at 1810-11; SH40, Tab 18 at 22.

c. The Three Smiths Participate in Sinclair's Health, Life Insurance, and 401(k) Plans Which Are Limited By Their Terms to Employees

141. During 1991 through 1993, the Four Jacks principals participated in numerous employee benefit plans offered by Sinclair. SH40 at 3 (Stipulation of September 12, 1994). Both David and Frederick Smith testified that they were not aware of any Sinclair employee plans in which the Four Jacks principals have not participated. T. at 1764, 2171.

i. Sinclair's Health Care Plan

142. Sinclair's health care plan is specifically directed at "the employees enrolled in the Sinclair Broadcast Group, Inc. Employee Benefit Plan." SH40, Tab 30 at FJS0083 (emphasis added). This plan is a document kept by Sinclair in the regular course of its business. T. at 1849. Frederick Smith is a trustee of the plan. SH40, Tab 30 at FJS0164. He is actively involved in its periodic evaluation. T. at 2160. Robert Smith

testified that he understands that Sinclair is the employer under which this plan is offered. T. at 2031.

143. According to the plan, the following criteria govern eligibility for participation:

Who Is Eligible

You are eligible to participate in this plan if you are a regular, full-time employee of Sinclair Broadcast Group, Inc. for at least 90 consecutive days. All full-time employees must be regularly scheduled to work a minimum of 25 hours per week.

SH40, Tab 30 at FJS0095. The plan also lists "Sinclair Broadcast Group, Inc." as the applicable "Employer." SH40, Tab 30 at FJS0153, FJS0164.

144. When asked about the eligibility requirements for Sinclair's health care plan, Robert Smith testified that he understands that the plan document provides that in order to be a participant that he had to be a regular full-time employee of Sinclair for at least 90 consecutive days. T. at 2034-38; SH40, Tab 30.

145. On September 17, 1992, Sinclair's Board of Directors unanimously agreed to amend the company's group health insurance plan and employee handbook to read:

Every full-time employee of Sinclair Broadcast Group, Inc., as a condition of their employment, will be required to either (1) be covered by one of the health insurance plans offered or (2) provide proof, annually, that they have health insurance coverage elsewhere.

SH40, Tab 26 (emphasis added).

ii. Sinclair's Group Life Insurance Plan

146. Sinclair's group life insurance plan is likewise intended for employees. T. at 2167. The eligible class of participants is identified as "All Employees." SH40, Tab 31 at FJS0171. The plan provides that enrollment is limited to those who "are in active employment with your employer" and "are in an employee class that is eligible for insurance." SH40, Tab 31 at FJS0176.

iii. Sinclair's Long-term Disability Plan

147. Sinclair's long-term disability plan, by its terms, is available only to Sinclair officers. SH40, Tab 29 at FJS0063. The plan summary, however, notifies officers that they are eligible only if they are in "active employment with your employer." SH40, Tab 29 at FJS0070. "Active employment" is defined as working for the employer "on a full-time basis and paid regular earnings," for a minimum number of hours at either the employer's usual place of business or a location to which travel is required by the business. SH40, Tab 29 at FJS0066.

iv. Sinclair's 401(k) Plan

148. During 1991 through 1993, the Four Jacks principals also participated in Sinclair's 401(k) plan. SH40 at 3; see, e.g., T. at 2043-44. Both David and Duncan Smith served during this period as trustees of this plan. SH40, Tab 11 at FJC0031, FJC0041, FJC0056. The summary plan description for this plan begins as follows:

Sinclair Broadcast Group, Inc. wishes to recognize the efforts its employees have made to its success and to

reward them by adopting a 401(k) Profit Sharing Plan and Trust. This 401(k) Profit Sharing Plan will be for the exclusive benefit of eligible employees and their beneficiaries.

SH40, Tab 28 at FJS0034 (emphasis added). When asked whether he knew that Sinclair's 401(k) plan was for the exclusive benefit of eligible employees and their beneficiaries, Robert Smith testified that "that's what it says so that's why we did it." T. at 2043; SH40, Tab 28 at FJS0034.

149. Sinclair's 401(k) plan specifically discusses "Distribution of Benefits Upon Termination of Employment." SH40, Tab 28 at FJS0045 (emphasis added). The summary of account activity for the trust fund lists all of the Smiths as "employees." SH40, Tab 12. Additionally, Sinclair's March 30, 1994, filing with the Securities and Exchange Commission describes the 401(k) plan as covering "eligible employees." SH40, Tab 18 at F-19. This filing was signed by all of the Four Jacks principals on behalf of Sinclair. T. at 1864.

150. In 1992, the Four Jacks principals' participation in Sinclair's 401(k), life insurance, and long-term disability coverage resulted in additional compensation of \$3,305 for David Smith, \$5,379 for Frederick Smith, \$2,942 for Duncan Smith, and \$2,911 for Robert Smith. SH40, Tab 14 at 55. In 1993, participation in these plans resulted in additional compensation of \$2,855 for David Smith, \$5,573 for Frederick Smith, \$2,235 for Duncan Smith, and \$2,102 for Robert Smith. SH40, Tab 18 at 21-22.

d. Sinclair Protected Its Discretion to Make Loans to the Smiths Through an Indenture Provision Protecting Its Ability to Make Loans to "Employees"

151. Sinclair, on occasion, makes personal loans to individuals at the company. T. at 1878. David Smith testified that there is no "defined loan program" and that the loans occurred at the company's discretion. Id. at 1878-80. David and Robert Smith have received loans from the company. T. at 1878.

152. On December 9, 1993, Sinclair filed an indenture with the FCC pursuant to Rule 73.3613. T. at 1881. Under a section entitled "Permitted Investment," the indenture document provides for "[l]oans up to an aggregate of \$1 million outstanding at any one time to employees pursuant to the benefits available to the employees of the Company or any Restricted Subsidiary from time to time in the ordinary course of business." SH41 at 19 (emphasis added). David Smith testified that this indenture document provided the company with the discretion to make loans to the three Smiths. T. at 1881-83.

e. David and Frederick Smith Have Corporate Credit Cards From Sinclair

153. David and Frederick Smith testified that they have corporate credit cards through Sinclair. T. at 1922, 2178. The name "Sinclair Broadcast Group" appears on the face of Frederick Smith's card. T. at 2178. Robert Smith testified that he has a corporate credit card but that he could not remember the name of the corporation involved. T. at 2017-18.

8. Before the Misrepresentation Issue Was Added, the Three Smiths Testified That They Work Full Time as Officers of Sinclair

a. The Three Smiths Supervise the Three General Managers at Sinclair's Five Stations

154. Each of the principals testified in their frozen direct testimony of September 1993 and September 1994 that "[e]ach of the other stations owned¹⁶ (or [] acquired)¹⁷ by SBG has a professional General Manager who is fully responsible for each station's day-to-day operations." See, e.g., FJ2 at 2; FJ26 at ¶ 4. David Smith similarly testified that there is a general manager for each of these stations. T. at 1792. Sinclair has, however, only three general managers who manage its existing five subsidiary stations. T. at 1794-95. Mr. Frank is general manager of the Sinclair stations in Pittsburgh and Milwaukee. Id. Mr. Marks is general manager of the Sinclair stations in Baltimore and Birmingham. Id. Mr. Quigley is general manager of the Sinclair station in Columbus. Id.

155. The Smith brothers supervise the general managers of each Sinclair station. There are a lot of decisions that the station general managers can not make without guidance from the Smiths. T. at 1246; 1250. Generally speaking, the general managers do not have authority to hire and fire personnel without approval from the Smith brothers. T. at 1335. All the Smith

¹⁶ These stations are WPGH in Pittsburgh, WBFF in Baltimore, and WTTE in Columbus. T. at 1793-94.

¹⁷ These are stations WCGV in Milwaukee and WTOO in Birmingham. T. at 1794.

brothers have been involved in the hiring and firing for all the Sinclair stations. T. at 1330.

156. General managers also do not have the authority to borrow or spend money without approval from the Smiths. T. at 1336. Sinclair uses a purchase order ("PO") system whereby the station issues POs for things they need which are sent to Sinclair's home office for approval by the Smith brothers. T. at 1992. Every purchase order from a subsidiary station must be approved by the Smiths. T. at 2068-69. Robert Smith testified that "[n]obody spends any money unless they ask us." T. at 2068.

157. In addition, the Smith brothers have "absolute input" into programming the Sinclair stations, which involves discussion with the general manager involved. T. at 1333. David Smith usually handles programming decisions, T. at 1336, although his brothers will discuss these matters with him. T. at 2106.

158. Sinclair also has one comptroller for all of its stations who handles financial and business operations and reports to the Four Jacks principals. T. at 1145-46; FJ2 at 2; T at 1250.

b. David Smith Testified That He Has a Full Day at Sinclair and Is Responsible for the Growth, Strategic Planning, and Financing of the Business

159. David Smith is President, Chief Executive Officer, and a Director of Sinclair. T. at 1989, 2005. There has not been a change in David Smith's status at Sinclair since 1991. T. at 1778. He works at 2000 West 41st Street, Baltimore, MD, which is where the offices of Sinclair are located, and he can be reached

at telephone number (410) 467-5005, which is the phone number for Sinclair. T. at 1762. David Smith testified that this is where he goes to conduct his business, and his phone, desk and files are located there. T. at 1990. At the 1993 hearing, David Smith testified that his office hours at Sinclair are 8:30 to 5:30 on average, T. at 1142-43,¹⁸ and he has a full day at Sinclair. T. at 1144.¹⁹

160. By virtue of his positions at Sinclair, David Smith is responsible for the growth, strategic planning, and financing of the business. T. at 1141. David Smith is a key personnel of Sinclair and the company has an insurance policy on his life. T. at 1896; SH40, Tab 14 at 17. As President, he is generally responsible for everything overall, T. at 1925, including the

¹⁸ When David Smith was asked about his office hours at the 1994 hearing, the following exchange took place:

Q. Well, do you recall on page 1142 of your prior testimony, line 23, I asked you, "Well, let's start with what are your office hours?" Answer "8:30 to 5:30 average." Is that correct?

A. Yes. That's what I choose them to be when I choose them to be it.

Q. And how long has that been your choice?

A. I would say a number of years....

T. at 1772.

¹⁹ David Smith testified that "he was physically at the office of Sinclair 30 to 40 hours during an average week. T. at 1990. He was unable to estimate how much of that time is devoted to the business of Sinclair and its subsidiaries and how much is spent managing his other investments. T. at 1990-91. He certainly spends more time on Sinclair than the other businesses that he is involved in. T. at 1991. He testified, however, that these other business interests are not actively promoted businesses. T. at 2001. They are "primarily collection points for rental income" and that to "the extent that there's any real business that's conducted on a daily basis, there isn't any." T. at 2001.